

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**VICKY A. HENDERSON, Appellant**

**and**

**DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE,  
San Diego, CA, Employer**

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**Docket No. 04-273  
Issued: January 27, 2005**

*Appearances:*  
*Vicky A. Henderson, pro se*  
*Office of the Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On November 6, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated October 23, 2003. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

Appellant, a 29-year-old revenue officer, filed a claim for benefits based on an emotional condition on April 23, 2003. She stated that she experienced a stroke on March 31, 2003 due to stress caused by the employing establishment's failure to comply with her physician's restrictions regarding her workload. Appellant asserted that the proximate cause of her stroke occurred on March 31, 2003 when her group manager telephoned her while she was working at

home and asked her to come into the office at 5:00 p.m. and submit some work-related material. Appellant made the following allegations in an April 27, 2003 statement:

- (1) She experienced strokes on approximately December 28, 2001 and January 18, 2002. Upon returning to work on March 22, 2002, she was to be placed in provisional assignment status by the Equal Employment Opportunity (EEO) Commission following a stroke and recurrent transient ischemic attacks; however, her group manager, Joy Stanley, failed to reasonably accommodate her pursuant to her doctor's orders. She alleged that Ms. Stanley maintained her work inventory at the same 44-45 case level from March 22, 2002 through April 10, 2003 and continued to fail to reasonably accommodate her work restrictions;
- (2) While working at home on March 31, 2003 at which time she was engaged in priority work with April 15, 2003 deadlines, she received an email from Ms. Stanley requesting that she come into the office that afternoon for a nonevaluative review. While getting ready to come into the office, she further alleged that she started having Transient Ischemic Attack's [TIA's];
- (3) When she called Ms. Stanley on April 14, 2003 regarding her doctor's current limitations, Ms. Stanley became angry and verbally abusive. She stated that Ms. Stanley informed her that there was no Grade 12 work for her to perform, that she would be contacting a management supervisor about her work situation and did not need to call her afterwards.

In a report dated May 13, 2003, Dr. Gregory A. Benbow, an osteopath acting as the employing establishment's medical officer, stated that none of appellant's claimed conditions were work related. He stated:

"First of all, this lady is claiming these cerebrovascular events were work related. I say that they are not. Strokes and TIA's are caused by preexisting risk factors [appellant] already had (*e.g.*, being overweight, having high blood pressure to name a few). A lot of people state that 'stress' caused the problem in their lives. This lady is claiming the same.... I say that poor health causes her events, not workplace stress. Her general poor health is a matter of her chosen lifestyle, genetics and age, *not* the workplace. (Emphasis in the original).

"Second, I note that she is claiming to have had a stroke ... as I note above ... on December 28, 2001. *But the release paper given her from the hospital states that she had a TIA instead ... not a stroke.* A TIA (Transient Ischemic Attack) is a condition like a stroke, but in the case of a TIA, *the patient fully recovers within 24-hour[s] ... usually sooner.* If she had a TIA, then by definition, she was recovered at the time of her release from the hospital. And if she was recovered by that time, where is the disability?"

Based on the available medical evidence of record, Dr. Benbow concluded that appellant did not experience a stroke on either December 28, 2001 or March 31, 2003.

By letter dated May 30, 2003, the Office requested additional information. In response, appellant submitted a detailed statement dated June 5, 2003, in which she reiterated and expounded on all of her previous allegations and made additional allegations. These included:

- (1) She alleged that Ms. Stanley called her at home and made several inappropriate and angry statements in regard to the April 15, 2003 deadline cases;<sup>1</sup>
- (2) She further alleged that her flexiplace request was denied as of April 1, 2003.
- (3) She alleged that she reported to management that her work environment was unsafe because someone was putting foreign objects on her when her back was turned and because management had not addressed her allegations concerning the race, color and other miscellaneous discrimination issues;
- (4) She alleged that on May 30, 2003 she contacted Ms. Stanley to pick up files from the office in order to prepare a response to the Office. Appellant further alleges that Ms. Stanley told her she was not permitted into her office without a doctor's release. Appellant contends that, although she asked management for the contents of her cubicle, these had not been returned as of June 5, 2003. She claims she began experiencing TIA's because of her inability to obtain her personal items.

Ms. Stanley responded to appellant's allegations in an October 22, 2003 email to the Office. She stated:

- (1) When she met with appellant on April 10, 2003 appellant told her that she was being bothered at work by three revenue officers, who were putting parasites on her back while her back was turned. Appellant also claimed that someone was putting something up her nose while she was sitting at her desk. Ms. Stanley advised appellant to file a safety complaint and give her additional information; however, appellant never provided the additional information and never filed such a claim;
- (2) On April 10, 2003, appellant asked Ms. Stanley to reconsider her request to work at home. Ms Stanley agreed to do so, but told appellant that she wanted to work closely with her to provide any assistance and/or to support she would require in addressing and resolving cases issue and workload management issues. Appellant stated that she had applied for a tax fraud position or wanted to work part time. Ms. Stanley told her there were no part-time positions available in her division and that she knew of no vacancies in the area;
- (3) Appellant had a total inventory of 33 cases on April 14, 2003. Ms. Stanley stated that, although the inventory range of a GS-12 revenue officer, such as appellant, was 34 to 50 cases, her inventory was lower than the minimal standards

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<sup>1</sup> Appellant reiterated this allegation, in addition to several others, in her June 5, 2003 statement.

for her grade level. Ms. Stanley added that she had assigned only one new case to appellant from January 8 to April 14, 2003;

(4) Ms. Stanley stated that she prepared the March 31, 2003 nonevaluative (informal) review of appellant's work in order to help improve her workload management in lieu of giving her a formal reprimand which would go on her record. Ms. Stanley indicated to appellant both verbally and in writing that she wanted to work with her in addressing performance issues. When appellant called her at the office on March 31, 2003, she told Ms. Stanley that she was not appropriately dressed to come into the work environment at that time and would not be able to get dressed and arrive at the office until 5:00 or 6:00 p.m. Although Ms. Stanley told her she would be glad to accommodate appellant's schedule in order to meet with her, appellant never showed up;

(5) Ms. Stanley stated that appellant had failed to provide her with all the information required for her medical treatments in a timely manner;

(6) Ms. Stanley stated that during the April 14, 2003 conversation, appellant told her she could fax her a copy of her doctor's release. She told appellant that she already had them but that reasonable accommodation issues were not resolved. She advised appellant that the information would need to be reviewed and approved by the EEO office and territory manager. Ms. Stanley denied appellant's allegation that she was angry or verbally abusive to appellant during this conversation or at any other time she worked for the employing establishment.

(7) Appellant asked for permission to work at home by packaging 53 cases. Ms. Stanley denied this request, stating that it was unable to create a GS-12 position with duties that she would like to work on exclusively.

By decision dated October 23, 2003, the Office denied appellant compensation for an emotional condition, finding that appellant had not established a compensable factor of employment.

### **LEGAL PRECEDENT**

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>2</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>3</sup>

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<sup>2</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>3</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

The first issue to be addressed is whether appellant has cited factors of employment that contributed to her alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>4</sup> On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.<sup>5</sup>

### ANALYSIS

The Board finds that the administrative and personnel actions taken by management in this case contained no evidence of agency error and are, therefore, not considered factors of employment. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.<sup>6</sup> In the instant case, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to the incidents of alleged unreasonable actions involving personnel matters on the part of the employing establishment. Regarding appellant's allegation that her supervisor forced her to exceed her physician's work restrictions, resulting in her stroke, the Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.<sup>7</sup> Although the supervisor's handling of work restrictions and meeting schedules is generally related to appellant's employment, these are managerial functions. An employee's emotional reaction to an administrative or personnel matter is not covered under the Act, unless there is evidence that the employing establishment acted unreasonably.<sup>8</sup> Ms. Stanley, appellant's supervisor, rebutted appellant's allegations in her October 22, 2003 statement, stating that she had attempted to tailor appellant's work requirements and standards to whatever difficulties she was experiencing and to accommodate any medical restrictions she presented. Ms. Stanley advised that she had tried implementing a case inventory range for appellant that was lower than that required for a typical GS-12 revenue office. When appellant demonstrated difficulty meeting even this lower standard, Ms. Stanley prepared the March 31, 2003 informal review of appellant's work in order to help improve her workload management.<sup>9</sup> Ms. Stanley also stated that she had repeatedly indicated to appellant both verbally and in writing that she wanted to work with her in addressing performance issues.

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<sup>4</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Id.*

<sup>6</sup> *See Alfred Arts*, 45 ECAB 530, 543-44 (1994).

<sup>7</sup> *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

<sup>8</sup> *See Alfred Arts*, *supra* note 6.

<sup>9</sup> Ms. Stanley advised that she undertook this informal review for the additional reason that she was trying to help appellant avoid receiving an unfavorable performance appraisal at the end of her rating period, which would have to go on her record.

Further, Ms. Stanley stated that appellant had failed to provide her with all the information required for her medical treatments in a timely manner, which had further complicated her efforts to resolve reasonable accommodation issues.

While Ms. Stanley acknowledged that she denied appellant's request to work at home by packaging 53 cases, she provided a reasonable, good faith justification that creating such a GS-12 position with such duties would not be logistically feasible. Therefore, appellant has failed to provide any corroboration for this allegation that Ms. Stanley failed to accommodate her work restrictions. Absent medical information providing specific work restrictions, the employing establishment had insufficient information to accommodate appellant.<sup>10</sup> Accordingly, appellant has presented no evidence that the employing establishment acted unreasonably or committed error with regard to these incidents of administrative managerial functions.

Regarding appellant's allegations that she was wrongly denied a transfer to another position as part of the "reasonable accommodation" program, the Board has held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment as they do not involve the employee's ability to perform his or her regular or specially assigned work duties but rather constitute his or her desire to work in a different position.<sup>11</sup> The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.<sup>12</sup> However, appellant has failed to substantiate or provide corroboration for these allegations.

Regarding appellant's allegations that Ms. Stanley overburdened her with an excessive workload and gave her unreasonable deadlines, appellant did not provide any evidence that the employing establishment acted in an abusive or unreasonable manner in setting performance guidelines for her. The memoranda and letters from Ms. Stanley and other management personnel do not establish that she was overburdened by her workload or that she was subjected to unreasonable demands. The employing establishment indicated that appellant was given a reduced workload in an attempt to assist her with her medical difficulties and was given

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<sup>10</sup> A treatment note from Kaiser Permanente dated May 1, 2002 released appellant to return to work with restrictions of no more than 35 cases per day and no complex or very large financial cases. This note did not provide a diagnosis or present specific information as to why appellant was being put on work restrictions nor did it indicate the status of appellant's condition. Appellant alleged that Ms. Stanley did not accommodate these restrictions after she returned to work after experiencing strokes or TIA's on March 22, 2003. However, by appellant's own admission in her April 27, 2003 statement, she tried to avoid producing 34 cases per month, as Ms. Stanley stated. Progress notes from Kaiser Permanente dated July 2 and 22, 2002, also indicated that appellant could not work more than 34 cases at any time. These progress notes stated that appellant had experienced a "stroke" but did not specify what objective findings supported appellant's inability to work a full caseload. With respect to appellant filing a reasonable accommodation request, there is no evidence in the record that appellant filed such a request on March 22, 2002. The only evidence of such request contained in the record is one filed on October 8, 2002 appellant was asked to provide documentation for her claims that she required special accommodations, but the record indicates that appellant failed to submit such supporting documentation.

<sup>11</sup> *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

<sup>12</sup> *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

sufficient time to complete her work assignments. Thus, these actions on the part of management did not constitute a factor of employment.

The Board has held that emotional reactions to situations in which an employee is trying to meet her position requirements are compensable.<sup>13</sup> However, appellant has not submitted evidence indicating that the employing establishment imposed an unusually heavy workload and unreasonable deadlines.<sup>14</sup> Regarding appellant's allegation that she developed stress due to the uncertainty of her job duties and her insecurity about maintaining her position, the Board has previously held that a claimant's job insecurity is not a compensable factor of employment under the Act.<sup>15</sup>

The disciplinary actions taken by the employing establishment due to appellant's perceived diminished performance are not compensable in the absence of administrative error or abuse.<sup>16</sup> Disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct pertain to actions taken in an administrative capacity and are not compensable as factors of employment.<sup>17</sup> Appellant failed to demonstrate that Ms. Stanley was doing anything more than discharging her supervisory duties by monitoring and checking on her employees or that she engaged in improper conduct which exceeded her administrative responsibilities. While appellant alleged that Ms. Stanley committed administrative error by removing her from the flexiplace program, the April 1, 2003 letter which advised her of this decision indicated that it was undertaken due to her unacceptable performance. Assignment of a work schedule is an administrative function and not a work factor and is not compensable absent a showing of error or abuse.

As part of the managerial function, a supervisor must assign work. Appellant did not submit any evidence to substantiate that any of her work assignments were in error or were abusive.

Furthermore, while appellant alleged that she was told to come to a 5:00 p.m. meeting, she has failed to substantiate or provide corroboration for these allegations. With regard to appellant's allegation that her group manager caused her stroke on March 31, 2003 by telephoning her while she was working at home at 5:00 p.m. on March 31, 2003 she has not explained or established with any corroborative evidence why this request was in error or abusive.<sup>18</sup> Management's request for a meeting, even a 5:00 p.m. meeting, standing alone does not establish error or abuse. The Board will not speculate that this request for a meeting was in some way abusive or in error. Ms. Stanley stated that she told appellant she would be happy to

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<sup>13</sup> See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

<sup>14</sup> *Id.* *Georgia F. Kennedy*.

<sup>15</sup> See *Artice Dotson*, 42 ECAB 754, 758 (1990); *Allen C. Godfrey*, 37 ECAB 334, 337-38 (1986).

<sup>16</sup> *Drew A. Weismuller*, 43 ECAB 745 (1992); *Kathi A. Scarnato*, 43 ECAB 220 (1991).

<sup>17</sup> *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

<sup>18</sup> Appellant returned to work on March 22, 2002 from strokes or TIA's she allegedly experienced on December 28, 2001 and January 18, 2002. Appellant has not attributed these incidents to work activities.

arrange the meeting at her convenience and accommodate her schedule in order to arrange this meeting, but that appellant never responded to this offer. Appellant has not provided any additional information or corroborating evidence, such as witness statements, regarding the circumstances of her work assignments or of the meeting request so as to establish the context under which they were made.<sup>19</sup>

Appellant has provided no factual evidence to corroborate her allegation that she was forced to work in an unsafe work environment. Appellant had alleged that her work environment was unsafe because someone was putting foreign objects on her when her back was turned and because management had not addressed the race, color and miscellaneous discrimination issues.<sup>20</sup> Appellant has failed to provide any corroboration for these allegations.

Accordingly, a reaction to such factors did not constitute an injury arising within the performance of duty; such personnel matters were not compensable factors of employment in the absence of agency error or abuse.

The Board finds that appellant has failed to submit sufficient evidence to establish her allegations that management engaged in a pattern of harassment or acted in a discriminatory manner toward her. Appellant has alleged, in general terms, that Ms. Stanley harassed her, but has not provided the evidence to support her allegations that she was harassed, mistreated, or treated in a discriminatory manner by management.<sup>21</sup> Appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a certain superior at work which do not support her claim for an emotional disability.<sup>22</sup> For this reason, the Office properly determined that these incidents constituted mere perceptions of appellant and were not factually established.

Appellant alleged that when she called Ms. Stanley on April 14, 2003 regarding her doctor's current limitations and to her difficulties meeting the April 15, 2003 deadlines, Ms. Stanley became angry and verbally abusive. Appellant stated that Ms. Stanley informed her that there was no GS-12 work for her to perform, that she would be contacting a management supervisor about her work situation and did not need to call her afterwards. Appellant also alleged that Ms. Stanley called her at home and made several inappropriate and angry statements in regard to the April 15, 2003 deadline cases. Further, appellant alleged that on May 30, 2003 she contacted Ms. Stanley to pick up files from the office in order to prepare a response to the Office but was told she was not permitted into her office without a doctor's release. Appellant

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<sup>19</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>20</sup> With regard to appellant's claim that someone was putting objects on her, a January 26, 2002 Kaiser Permanente emergency room report indicated "chronic areas of excoriation with intense lichenification and discoloration and areas of keloid formation. Appellant stated in the report that she "thought someone was trying to hurt her" by "putting things on [her] skin," but admitted on further questioning that this was self-inflicted. As appellant did not specifically indicate who was putting the objects on her or what the objects were, this allegation is not compensable.

<sup>21</sup> See *Joel Parker, Sr.*, 43 ECAB 220 (1991). (The Board held that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.)

<sup>22</sup> See *Curtis Hall*, 45 ECAB 316 (1994).



contends that, although she asked management for the contents of her cubicle, these had not been returned as of June 5, 2003. She claims she began experiencing TIA's because of her inability to obtain her personal items. Appellant, however, has not provided a description of specific incidents or sufficient supporting evidence to substantiate the allegations.<sup>23</sup> Ms. Stanley denied appellant's allegation that she was angry or verbally abusive to appellant during the April 14, 2003 conversations or at any other time she worked for the employing establishment and denied failing to cooperate with any of appellant's personnel requests. Accordingly, appellant has not submitted any factual evidence to support her allegations that she was harassed, mistreated or treated in a discriminatory manner by her supervisors.

The Board notes that, since appellant has not established a compensable work factor, the medical evidence will not be considered.<sup>24</sup>

### **CONCLUSION**

The Board finds that the Office properly found that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 23, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: January 27, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>23</sup> See *Joel Parker, Sr.*, *supra* note 21.

<sup>24</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992).